

BEFORE THE
DIVISION OF MEDICAL QUALITY
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation
Against

Merritt Stewart Matthews, M.D.
Certificate No. C-31976

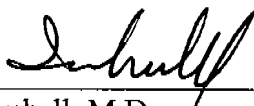
Case No. 10-1998-91174

DECISION

The attached Stipulation is hereby adopted by the Division of Medical Quality as its Decision in the above-entitled matter.

This Decision shall become effective at 5:00 p.m. on October 8, 1999.

IT IS SO ORDERED September 8, 1999 .

By: 
Ira Lubell, M.D.
President
Division of Medical Quality

1 BILL LOCKYER, Attorney General
of the State of California
2 SANFORD FELDMAN,
Deputy Attorney General
3 State Bar No. 47775
Department of Justice
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6
7 Attorneys for Complainant

8 **BEFORE THE**
9 **DIVISION OF MEDICAL QUALITY**
10 **MEDICAL BOARD OF CALIFORNIA**
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

11 In the Matter of the Accusation)
Against:) Case No. 10-98-91174
12)
13 **MERRITT STEWART MATTHEWS, M.D.**) **STIPULATION**
995 Gateway Center Way) **IN SETTLEMENT**
14 Suite 201) **AND ORDER**
San Diego, CA 92102)
15)
Physician's and Surgeon's)
16 Certificate No. C 31976)
17)
Physician Assistant Supervisor)
Approval No. SA 13197)
18 Respondent.)
19 _____)

20 Complainant, Ron Joseph, Executive Director of the
21 Medical Board of California ("Board"), by and through his
22 attorney, Bill Lockyer, Attorney General of the State of
23 California, by Sanford Feldman, Deputy Attorney General, and
24 Merritt Stewart Matthews, M.D. ("respondent"), by and through his
25 attorney Michael L. Crowley, Esq., hereby stipulate as follows:

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1 1. The Division of Medical Quality of the Board
2 ("Division") acquired jurisdiction over respondent by reason of
3 the following:

4 A. Respondent was duly served with a copy of the
5 Accusation, Statement to Respondent, Request for Discovery,
6 Form Notice of Defense and copies of Government Code
7 sections 11507.5, 11507.6 and 11507.7 as required by section
8 11503 and 11505, and respondent timely filed a Notice of
9 Defense within the time allowed by section 11506 of the
10 code.

11 B. Respondent has received and read the
12 Accusation which is presently on file as Case No. 10-98-
13 91174 before the Division. Respondent understands the
14 nature of the charges alleged in the Accusation and that the
15 charges and allegations constitute cause for imposing
16 discipline upon respondent's license to practice medicine
17 which was issued by the Board.

18 2. Respondent and his counsel are aware of each of
19 respondent's rights, including the right to a hearing on the
20 charges and allegations, the right to confront and cross-examine
21 witnesses who would testify against respondent, the right to
22 present evidence in his favor and call witnesses on his behalf,
23 or to testify, his right to contest the charges and allegations,
24 and other rights which are accorded to respondent pursuant to the
25 California Administrative Procedure Act (Gov. Code, § 11500 et
26 seq.), including the right to seek reconsideration, review by the
27 superior court, and appellate review.

1 3. Respondent freely and voluntarily waives each and
2 every one of the rights set forth in paragraph 2.

3 4. Respondent understands that in signing this
4 stipulation rather than contesting the Accusation, he is enabling
5 the Division to issue the following order without further
6 process.

7 5. For the purpose of resolving Accusation
8 No. 10-98-91174, respondent admits the truth and accuracy of
9 the charges and allegations in paragraph 6 of the Accusation.
10 Respondent admits that he has thereby subjected his Physician's
11 and Surgeon's Certificate to disciplinary action. Respondent
12 agrees to be bound by the Division's Disciplinary Order as set
13 forth below.

14 6. It is understood by respondent that, in deciding
15 whether to adopt this stipulation, the Division may receive oral
16 and written communications from its staff and the Attorney
17 General's office. Communications pursuant to this paragraph
18 shall not disqualify the Division or other persons from future
19 participation in this or any other matter affecting respondent.
20 In the event this settlement is not adopted by the Division, the
21 stipulation will not become effective and may not be used for any
22 purpose, except for this paragraph, which shall remain in effect.

23 8. This Stipulation in Settlement and Decision is
24 intended by the parties herein to be an integrated writing
25 representing the complete, final and exclusive embodiment of the
26 agreements of the parties.

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1 9. The parties agree that facsimile copies of this
2 Stipulation, including facsimile signatures of the parties, may
3 be used in lieu of original documents and signatures. The
4 facsimile copies will have the same force and effect as
5 originals.

6 10. Based upon the foregoing, it is stipulated and
7 agreed that the Division may issue the following as its decision
8 in this case.

9 **ORDER**

10 IT IS HEREBY ORDERED that Physician's and Surgeon's
11 Physician's and Surgeon's Certificate No. C 31976 and Physician
12 Assistant Supervisor Approval No. SA 13197 issued to Merritt
13 Stewart Matthews, M.D., are revoked. However, revocation of
14 Physician's and Surgeon's Certificate No. C 31976 is stayed and
15 respondent is placed on probation for two (2) years on the terms
16 and conditions set forth below. Within 15 days after the
17 effective date of this decision, respondent shall provide the
18 Division, or its designee, proof of service that respondent has
19 served a true copy of this decision on the Chief of Staff or the
20 Chief Executive Officer at every hospital where privileges or
21 membership are extended to respondent or where respondent is
22 employed to practice medicine and on the Chief Executive Officer
23 at every insurance carrier where malpractice insurance coverage
24 is extended to respondent.

25 1. **CONTROLLED DRUGS - PARTIAL RESTRICTION**

26 Respondent shall not prescribe, administer, dispense,
27 order, or possess any controlled substances as defined by the

1 California Uniform Controlled Substances Act, except for those
2 drugs listed in Schedule(s) III, IV and V of the Act.

3 However, respondent is permitted to prescribe,
4 administer, dispense or order controlled substances listed in
5 Schedule II of the Act for in-patients in a hospital setting,
6 and not otherwise.

7 **2. PRESCRIBING PRACTICES COURSE**

8 Within sixty (60) days of the effective date of this
9 decision, respondent shall enroll in a course in Prescribing
10 Practices, approved in advance by the Division or its designee,
11 and shall successfully complete the course during the first year
12 of probation.

13 **3. CONTROLLED DRUGS - MAINTAIN RECORD**

14 Respondent shall maintain a record of all controlled
15 substances prescribed, dispensed or administered by respondent
16 during probation, showing all the following: 1) the name and
17 address of the patient; 2) the date; 3) the character and
18 quantity of controlled substances involved; and, 4) the
19 indications and diagnoses for which the controlled substance was
20 furnished.

21 Respondent shall keep these records in a separate file
22 or ledger, in chronological order, and shall make them available
23 for inspection and copying by the Division or its designee, upon
24 request.

25 **4. EDUCATION COURSE**

26 Within ninety (90) days of the effective date of this
27 decision, and on an annual basis thereafter, respondent shall

1 submit to the Division or its designee for its prior approval an
2 educational program or course to be designated by the Division,
3 which shall not be less than 20 hours per year, for each year of
4 probation. This program shall be in addition to the Continuing
5 Medical Education requirements for re-licensure. Following the
6 completion of each course, the Division or its designee may
7 administer an examination to test respondent's knowledge of the
8 course. Respondent shall provide proof of attendance for 45
9 hours of continuing medical education of which 20 hours were in
10 satisfaction of this condition and were approved in advance by
11 the Division or its designee. During the first year of
12 probation, respondent may apply hours spent in a prescribing
13 practices course (§ 2, above) toward satisfaction of this
14 requirement.

15 5. **ETHICS COURSE**

16 Within sixty (60) days of the effective date of this
17 decision, respondent shall enroll in a course in Ethics approved
18 in advance by the Division or its designee, and shall
19 successfully complete the course during the first year of
20 probation.

21 6. **OBEY ALL LAWS**

22 Respondent shall obey all federal, state and local
23 laws, all rules governing the practice of medicine in California,
24 and remain in full compliance with any court ordered criminal
25 probation, payments and other orders.

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1 7. **QUARTERLY REPORTS**

2 Respondent shall submit quarterly declarations under
3 penalty of perjury on forms provided by the Division, stating
4 whether there has been compliance with all the conditions of
5 probation.

6 8. **PROBATION SURVEILLANCE PROGRAM COMPLIANCE**

7 Respondent shall comply with the Division's probation
8 surveillance program. Respondent shall, at all times, keep the
9 Division informed of his or her addresses of business and
10 residence which shall both serve as addresses of record. Changes
11 of such addresses shall be immediately communicated in writing to
12 the Division. Under no circumstances shall a post office box
13 serve as an address of record.

14 Respondent shall also immediately inform the Division,
15 in writing, of any travel to any areas outside the jurisdiction
16 of California which lasts, or is contemplated to last, more than
17 30 days.

18 9. **INTERVIEW WITH THE DIVISION, ITS DESIGNEE OR ITS**
19 **DESIGNATED PHYSICIAN(S)**

20 Respondent shall appear in person for interviews with
21 the Division, its designee or its designated physician(s) upon
22 request at various intervals and with reasonable notice.

23 10. **TOLLING FOR OUT-OF-STATE PRACTICE, RESIDENCE OR**
24 **IN-STATE NON-PRACTICE**

25 In the event respondent should leave California to
26 reside or to practice outside the State or for any reason should
27 respondent stop practicing medicine in California, respondent

1 shall notify the Division or its designee in writing within ten
2 days of the dates of departure and return or the dates of non-
3 practice within California. Non-practice is defined as any
4 period of time exceeding 30 days in which respondent is not
5 engaging in any activities defined in Sections 2051 and 2052 of
6 the Business and Professions Code. All time spent in an
7 intensive training program approved by the Division or its
8 designee shall be considered as time spent in the practice of
9 medicine. Periods of temporary or permanent residence or
10 practice outside California or of non-practice within California,
11 as defined in this condition, will not apply to the reduction of
12 the probationary period. During periods of temporary or
13 permanent residence or practice outside California or of non-
14 practice within California, as defined in this condition,
15 respondent is not required to comply with any terms and
16 conditions of probation other than the requirement for the
17 payment of cost recovery, as set in paragraph 13 below.

18 11. **COMPLETION OF PROBATION**

19 Upon successful completion of probation, respondent's
20 certificate shall be fully restored.

21 12. **VIOLATION OF PROBATION**

22 If respondent violates probation in any respect, the
23 Division, after giving respondent notice and the opportunity to
24 be heard, may revoke probation and carry out the disciplinary
25 order that was stayed. If an accusation or petition to revoke
26 probation is filed against respondent during probation, the
27 Division shall have continuing jurisdiction until the matter is

1 final, and the period of probation shall be extended until the
2 matter is final.

3 13. **COST RECOVERY**

4 Within 90 days of the effective date of this order,
5 respondent shall pay the Division the amount of \$980.80 for its
6 investigation and prosecution costs. Failure to reimburse the
7 Division's cost of its investigation and prosecution as set forth
8 herein shall constitute a violation of the probation order,
9 unless the Division agrees in writing to payment by an
10 installment plan because of financial hardship. The filing of
11 bankruptcy by the respondent shall not relieve the respondent of
12 his/her responsibility to reimburse the Division for its
13 investigative and prosecution costs.

14 14. **PROBATION MONITORING COSTS**

15 Respondent shall pay the costs associated with
16 probation monitoring each and every year of probation. Such
17 costs, which are currently set at \$2,304 per year and may vary
18 from year to year, shall be payable to the Division at the
19 beginning of each calendar year. Failure to pay such costs shall
20 constitute a violation of probation.

21 15. **LICENSE SURRENDER**

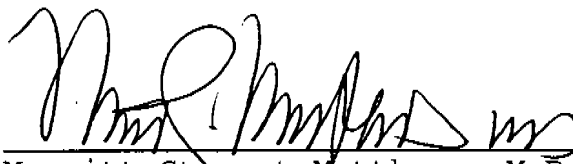
22 Following the effective date of this decision, if
23 respondent ceases practicing due to retirement, health reasons or
24 is otherwise unable to satisfy the terms and conditions of
25 probation, respondent may voluntarily tender his/her certificate
26 to the Division. The Division reserves the right to evaluate the
27 respondent's request and to exercise its discretion whether to

1 grant the request, or to take any other action deemed appropriate
2 and reasonable under the circumstances. Upon formal acceptance
3 of the tendered license, respondent will no longer be subject to
4 terms and conditions of probation.

5 **ACCEPTANCE**

6 I have carefully read and fully understand the
7 stipulation and order set forth above. I have discussed the
8 terms and conditions set forth in the stipulation and order with
9 my attorney, Michael L. Crowley, Esq. I understand that in
10 signing this stipulation I am waiving my right to a hearing on
11 the charges set forth in the Accusation on file in this matter.
12 I further understand that in signing this stipulation the
13 Division may enter the foregoing order placing certain
14 requirements, restrictions and limitations on my right to
15 practice medicine in the State of California.

16 DATED: 7/01/99

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21 Merritt Stewart Matthews, M.D.
Respondent

22 I concur in the Stipulation.

23 DATED: 7/1/99

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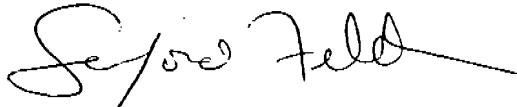
27 Michael L. Crowley
Attorney for Respondent

1 I concur in the Stipulation.

2 DATED:

July 1, 1999

3 BILL LOCKYER, Attorney General
4 of the State of California

5 

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7 SANFORD FELDMAN
8 Deputy Attorney General

9 Attorneys for Complainant

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11 mbc\matthews\mbc.6/30/99

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO *February 19 99*
BY *Donald A. Mether* ANALYST

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Attorneys for Complainant

BEFORE THE
DIVISION OF MEDICAL QUALITY
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation)	
Against:)	Case No. 10-98-91174
)	
MERRITT STEWART MATTHEWS, M.D.)	ACCUSATION
995 Gateway Center Way)	
Suite 201)	
San Diego, CA 92102)	
)	
Physician's and Surgeon's)	
Certificate No. C 31976, -)	
)	
Physician Assistant Supervisor)	
Approval No. SA 13197)	
)	
Respondent.)	

The Complainant, Ron Joseph, as cause for disciplinary
action, alleges:

PARTIES

1. Complainant, Ron Joseph, is the Executive Director
of the Medical Board of California (hereinafter the "Board") and
brings this accusation solely in his official capacity.

2. On or about December 29, 1969, Physician's and
Surgeon's Certificate No. C 31976 was issued by the Board to

1 Merritt Stewart Matthews, M.D. (hereinafter "respondent"), and at
2 all times relevant to the charges brought herein, this license
3 has been in full force and effect. Unless renewed, it will
4 expire on July 31, 1999.

5 3. On or about November 23, 1982, Physician Assistant
6 Supervisor Approval No. SA 13197 was issued by the Board to
7 Merritt Stewart Matthews, M.D. (hereinafter "respondent"), and at
8 all times relevant to the charges brought herein, this license
9 has been in full force and effect. Unless renewed, it will
10 expire on July 31, 1999.

11 JURISDICTION

12 4. This Accusation is brought before the Division of
13 Medical Quality of the Board (hereinafter the "Division"), under
14 the authority of the following sections of the California
15 Business and Professions Code (hereinafter "Code"):

16 A. Code section 2227 provides, in pertinent
17 part, that the Division may revoke, suspend for a period not
18 to exceed one year, or place on probation and order the
19 payment of probation monitoring costs, the license of any
20 licensee who has been found guilty under the Medical
21 Practice Act.

22 B. Code section 2234 provides, in pertinent
23 part, that the Division shall take action against any
24 licensee who is charged with unprofessional conduct.
25 Unprofessional conduct includes, but is not limited to,
26 the following:

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1 "(a) Violating or attempting to violate, directly or
2 indirectly, or assisting in or abetting the violation
3 of, or conspiring to violate, any provision of this
4 chapter.

5 "(b) Gross negligence.

6 "(c) Repeated negligent acts.

7 "(d) Incompetence.

8 "(e) The commission of any act involving dishonesty or
9 corruption which is substantially related to the
10 qualifications, functions, or duties of a physician and
11 surgeon.

12 ". . . ."

13 C. Code section 2238 provides, in pertinent
14 part, that a violation of any federal statute or federal
15 regulation or any of the statutes or regulations of this
16 state regulating dangerous drugs or controlled substances
17 constitutes unprofessional conduct.

18 D. Code section 2242 provides, in pertinent
19 part, that prescribing, dispensing, or furnishing dangerous
20 drugs without a good faith prior examination and medical
21 indication therefor constitutes unprofessional conduct.

22 E. Code section 2262 provides, provides, in
23 pertinent part, that knowingly making or signing any
24 certificate or other document directly or indirectly related
25 to the practice of medicine which falsely represents the
26 existence or nonexistence of a state of facts, constitutes
27 unprofessional conduct.

1 F. Code section 141 provides, in pertinent part,
2 that for any license issued by a board, a disciplinary
3 action taken by another state, by any agency of the federal
4 government, or by another country for any act substantially
5 related to the practice regulated by the California license,
6 may be a ground for disciplinary action. A certified copy
7 of the record of the disciplinary action taken against the
8 licensee shall be conclusive evidence of the events related
9 therein.

10 G. Code section 125.3 provides, in pertinent
11 part, that the Board may request the administrative law
12 judge to direct any licensee found to have committed a
13 violation or violations of the licensing act, to pay the
14 Board a sum not to exceed the reasonable costs of the
15 investigation and enforcement of the case.

16 5. Section 14124.12 of the Welfare and
17 Institutions Code provides, in pertinent part, that: "Upon
18 receipt of written notice from the Medical Board of California,
19 the Osteopathic Medical Board of California, or the Board of
20 Dental Examiners of California, that a licensee's license has
21 been placed on probation as a result of a disciplinary action,
22 the department [of Health Services] may not reimburse any Medi-
23 Cal claim for the type of surgical service or invasive procedure
24 that gave rise to the probation including any dental surgery or
25 invasive procedure, that was performed by the licensee on or
26 after the effective date of probation and until the termination
27 of all probationary terms and conditions or until the proba-

1 tionary period has ended, whichever occurs first. This section
2 shall apply except in any case in which the relevant licensing
3 board determines that compelling circumstances warrant the
4 continued reimbursement during the probationary period of any
5 Medi-Cal claim, including any claim for dental services, as so
6 described. In such a case, the department shall continue to
7 reimburse the licensee for all procedures, except for those
8 invasive or surgical procedures for which the licensee was placed
9 on probation.

10 **FIRST CAUSE FOR DISCIPLINE**

11 (Disciplinary Action by a Federal Agency)

12 6. Respondent Merritt Stewart Matthews, M.D., is
13 subject to disciplinary action in that he was subjected to
14 disciplinary action by a federal agency for an act substantially
15 related to the practice regulated by a California physician's and
16 surgeon's license, in violation of Code section 141. The
17 specifics are as follows:

18 A. On February 22, 1996, the Deputy Assistant
19 Administrator, Office of Diversion Control, Drug Enforcement
20 Administration (DEA), issued an Order to Show Cause to
21 respondent. The order notified respondent of his
22 opportunity to show cause why his DEA Certificate of
23 Registration should not be revoked. The order to show cause
24 was based upon allegations that respondent had prescribed
25 without legitimate medical purpose.

26 B. On August 11, 1998, the Acting Deputy
27 Administrator, Office of Diversion Control, DEA, issued a

1 decision imposing discipline on respondent's DEA Certificate
2 of Registration. The discipline, effective September 17,
3 1998, included: 1) a requirement for additional training in
4 the proper handling of controlled substances with proof
5 thereof to be submitted within six months; 2) a requirement
6 for the maintenance of a log of prescribed controlled
7 substance and a requirement for notification of changes in
8 employment. The latter two conditions apply for a period of
9 three years from the effective date of the order.

10 SECOND CAUSE FOR DISCIPLINE

11 (Dishonesty, Prescribing with Medical
12 Indication, Violation of State and Federal
Drug Statutes and Falsification of Records)

13 7. Respondent Merritt Stewart Matthews, M.D., is
14 further subject to disciplinary action in that he was dishonest,
15 in violation of Code section 2234(e), in that he prescribed
16 controlled substances without good faith medical indication, in
17 violation of Code section 2242, he violated state and federal
18 drug statutes, in violation of Code section 2238, and in that he
19 falsified medical records. The specifics are set forth below.

20 A. In March 1992, an undercover drug agent
21 presented to respondent with a request for diet pills to
22 give her more energy. Respondent saw no problem with
23 prescribing for such a purpose and issued three controlled
24 substance prescriptions to the undercover agent, each
25 without medical indication. Further, respondent falsely
26 stated on one of the prescriptions that it was to decrease
27 appetite.

1 B. In addition, respondent unlawfully authorized
2 for the undercover agent a refill of the Desoxyn prescript-
3 ion, a Schedule II drug, in violation of 21 U.S.C. 829 and
4 CFR 1306.12.

5 **PRAYER**

6 **WHEREFORE**, the complainant requests that a hearing be
7 held on the matters herein alleged, and that following the
8 hearing, the Division issue a decision:

9 1. Revoking or suspending Physician's and Surgeon's
10 Certificate No. C 31976, heretofore issued to respondent Merritt
11 Stewart Matthews, M.D.;


12 2. Revoking or suspending Physician Assistant
13 Supervisor Approval No. SA 13197, which was heretofore issued to
14 respondent Merritt Stewart Matthews, M.D.;

15 3. Ordering respondent to pay the Board the actual
16 and reasonable costs of the investigation and enforcement of this
17 case;

18 4. Ordering respondent, if placed on probation, to
19 pay the costs of probation monitoring; and

20 5. Taking such other and further action as the
21 Division deems necessary and proper.

22 DATED: February 24, 1999

23
24 
25 _____
26 RON JOSEPH
27 Executive Director
Medical Board of California
State of California

Complainant